

**STATE OF MARYLAND
COMMISSION ON CIVIL RIGHTS**



**ELEMENTS OF PROOF
GUIDANCE**

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ELEMENTS OF PROOF GUIDANCE INTRODUCTION

This Elements of Proof Guidance from the Maryland Commission on Civil Rights (“Commission”) is intended to provide transparency to the public using the legal framework for agency investigations into claims of discrimination in employment, housing, public accommodations, and more. Understanding what is required to prove unlawful discrimination will be helpful to all parties, witnesses, and the broader public.

Each claim is listed with the citation to State Government Article, Title 20 (“§20-“), and a Subtitle, like Subtitle 6 Discrimination in Employment, or Subtitle 7 Discrimination in Housing. A few claims include excerpts from Title 20 to provide clarity for certain terms and provide context from the text of the law passed by the General Assembly. Title 20 can be found by using the link below and selecting “State Government (gsg)” under Articles and choosing the relevant Section of Subtitle 6 or Subtitle 7 <https://mgaleg.maryland.gov/mgawebsite/Laws/Statutes>

TIPS:

It’s helpful to understand that Title 20 sets out to prohibit certain conduct but cannot address all types of behavior. The Commission handles claims of discrimination but not all poor treatment is because of discrimination. A bad manager that is rude to everyone may not be treating someone unfairly because of that person’s protected class. A restaurant that provides bad service may not be serving burnt food because of a patron’s protected class. Even if something is unfair, that does not make it unlawful discrimination.

A complaint of discrimination can be resolved at any time after an investigation begins in any number of ways. Keep in mind that the investigation and the processes used by the Commission to address civil rights discrimination require information, a timeline, facts, and support that can be verified or corroborated with evidence. The final decision about your complaint may be determined by a Judge or Jury and the investigation is intended to provide reliable evidence and context to help the Judge or Jury to reach a sound conclusion.

Disclaimer: This document is produced as a public service and is intended for informational purposes only – it is not legal advice. The law is constantly evolving, and the Commission works every day to protect and uphold civil rights for everyone in the State of Maryland. This document is subject to change without notice.

KEY TERMS:

- *Complainant* – a person that files a complaint alleging a discriminatory act.
- *Respondent* – a person accused in a complaint of a discriminatory act.

- *Protected class* – personal characteristics such as race, color, religion, sex, age, familial status, national origin, marital status, sexual orientation, gender identity, disability, source of income, or military status.
- *Disparate Treatment* – Employee was treated less favorably than other employees because of their protected class. This theory of discrimination can be proven using direct evidence or circumstantial evidence. [COMMON]
- *Disparate Impact* – Employment practices that seem neutral on their face but do in fact affect the protected class more harshly. Proof of discriminatory intent is not required for this theory and often relies on statistics. [LESS COMMON]
- *Evidence* – An item or piece of information offered as proof of a fact that makes the fact more or less probable (likely to be true). This includes witness testimony from a neighbor or co-worker, documents like warning letters, eviction notices, texts, emails or chats, photographs, and other tangible objects. For example, a Complainant alleges sex discrimination related to her termination and has a co-worker as a witness, while the Respondent offers disciplinary records showing Complainant’s performance was unsatisfactory. The testimony from the witness and the disciplinary records are both types of evidence that help clarify the issue further, whether the Complainant was terminated because of sex discrimination or poor performance. There are different rules for admissibility (acceptance of evidence by the court) depending on the setting.
- *Direct Evidence* – Facts that establish (animus) intent with no additional inferences. There is clear evidence of discriminatory motives. It would be the “smoking gun” in the case, like if the investigation of a race discrimination claim revealed an internal email between Supervisors calling an employee a racial slur. [RARE]
- *Circumstantial Evidence* – Facts that establish (animus) intent but requires additional reasonable inferences. For example, suspicious timing for discipline after an internal complaint against a supervisor, or ambiguous statements and phrases that can have discriminatory undertones. [COMMON]
- *Pretext* – A reason given by Respondent as a justification for any adverse action that is not based in fact. It is an excuse and is not the real reason for the adverse action.
- *Mixed-Motive* – Evidence shows the Respondent acted on **both** lawful and unlawful grounds. For example, the Complainant can prove a claim for terms or conditions on the basis of race discrimination, but the Respondent is able to show the Complainant would have been fired anyway because they learned, for example, that the Complainant lied on his resume to get the job (after-acquired evidence). If the Respondent successfully establishes a mixed motive, then reinstatement is not an option, and the Complainant receives limited damages.

- *Pregnancy or childbirth as a disability* – Pregnancy itself is not a disability under Title 20. The protections in the law specifically cover disabilities caused or contributed to by pregnancy or childbirth. For example, a pregnant Complainant with gestational diabetes or a Complainant that developed postpartum depression after childbirth would both be protected by this law.
- *Discrimination v. Retaliation* - Any type of discrimination must be related to the protected class of the Complainant. For example, hiring discrimination can be based on the Complainant’s race, disability, or age. The focus is the discrimination itself and its direct connection to the Complainant’s protected class. That is the most common type of discrimination the agency handles. Retaliation is different because the center of that unlawful act is not the protected class of the Complainant but the Complainant opposing acts prohibited by the law or for engaging in protected activity.

Discrimination	Retaliation: Opposing Acts Prohibited by Law	Retaliation: Protected Activity
A Supervisor at a phone company is imposing less favorable terms or conditions in work assignments on the Complainant because of his race.	Complainant was recently promoted at a small business with automated payroll systems. While verifying time sheets, she noticed that Black employees make a lot less money than White employees. She observed this same pattern for nearly every role in the business. Complainant told her boss, hoping he was not aware the Hiring Manager was doing this and thinking it would be fixed. Two days later the Complainant received a termination notice in the mail with no explanation. Complainant was fired in retaliation for opposing prohibited discrimination in pay based on race.	Complainant reports his Supervisor’s race discrimination to his General Manager and HR notifies the Supervisor of an internal investigation. A couple days later, the Supervisor docks the Complainant’s daily commission for a made-up infraction. This would be retaliation because the motive for this treatment is not the Complainant’s race again, but the Complainant’s protected activity of reporting the abuse to the company.

EMPLOYMENT DISCRIMINATION

1. HIRING §20-606(a)(1)

In order to establish a violation for hiring, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was qualified for and applied to a vacant position;
- (3) Complainant was rejected despite their qualifications;
- (4) The position was left open or was filled by a similarly situated applicant not of the Complainant's protected class;
- (5) Respondent offered a legitimate nondiscriminatory reason for the adverse action; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

2. REASONABLE ACCOMMODATION §20-606(a)(4)

In order to establish a violation for refusal/failure to grant a reasonable accommodation, the evidence must show the following:

- (1) Complainant has a disability as defined under the Annotated Code of Maryland, State Government Article, § 20-601(b);
- (2) Respondent had notice of disability;
- (3) Complainant is able to perform the essential functions of the position with a reasonable accommodation;
- (4) Respondent refused/failed to make an accommodation; and
- (5) Respondent has no verified defense of undue hardship.

3. RELIGIOUS ACCOMMODATION

In order to establish a violation for refusal to grant a religious accommodation, the evidence must show the following:

- (1) Complainant has a bona fide religious belief that conflicts with an employment requirement;
- (2) Complainant informed the employer of this belief;
- (3) Complainant was disciplined for failure to comply with the conflicting employment requirement; and
- (4) Respondent did not provide an accommodation because it would have caused an undue hardship—that would result in 'more than a de minimis cost' to the Respondent.

4. WAGES §20-606(a)(1)

In order to establish a violation for wages, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was paid less than others similarly situated but not of Complainant's protected class;

- (3) The positions involved required substantially equal skill, effort, and responsibility;
- (4) Respondent offered a legitimate nondiscriminatory reason for the difference in wages; and
- (5) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

5. BENEFITS §20-606(a)(1)

In order to establish a violation for benefits, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was denied a benefit;
- (3) The denied benefit was extended to others similarly situated but not of Complainant's protected class;
- (4) Respondent offered a legitimate nondiscriminatory reason for the denial of benefits; and
- (5) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

6. TERMS §20-606(a)(1)

In order to establish a violation for terms, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant suffered an adverse employment action;
- (3) Complainant was performing and meeting legitimate job expectations at the time the adverse action was taken;
- (4) Complainant was treated differently from similarly situated employees outside the Complainant's protected class;
- (5) Respondent offered a legitimate nondiscriminatory reason for the **adverse action**; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

7. CONDITIONS §20-606(a)(1)

In order to establish a violation for conditions, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant suffered an adverse employment action;
- (3) Complainant was performing and meeting legitimate job expectations at the time the adverse action was taken;
- (4) Complainant was treated differently from similarly situated employees outside the Complainant's protected class;
- (5) Respondent offered a legitimate nondiscriminatory reason for the **adverse action**; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

8. PRIVILEGES §20-606(a)(1)

In order to establish a violation for privileges, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant suffered an adverse employment action;
- (3) Respondent imposed unfavorable or less favorable privileges on the Complainant;
- (4) The Respondent maintained privileges for similarly situated employees not of the Complainant's protected class;
- (5) Respondent offered a legitimate nondiscriminatory reason for the **adverse action**; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

9. PROMOTION §20-606(a)(1)

In order to establish a violation for promotion, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Respondent had a vacant position;
- (3) Complainant applied for or expressed an interest in the position;
- (4) Complainant was qualified for the position;
- (5) Complainant was not selected but a lessor qualified person not of the Complainant's protected class was selected;
- (6) Respondent offered a legitimate nondiscriminatory reason for the decision not to promote; and
- (7) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

10. DISCIPLINE §20-606(a)(1)

In order to establish a violation for discipline, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was performing and meeting legitimate job expectations;
- (3) Complainant was disciplined;
- (4) Others similarly situated but not of the Complainant's protected class were not disciplined or were not disciplined in the same manner although they committed the same or similar infractions;
- (5) Respondent offered a legitimate nondiscriminatory reason for the disciplinary action; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

11. DEMOTION §20-606(a)(1)

In order to establish a violation for demotion, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was performing and meeting legitimate job expectations;
- (3) Complainant was demoted;
- (4) Others similarly situated but not of the Complainant's protected class were not demoted;
- (5) Respondent offered a legitimate nondiscriminatory reason for the demotion; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

12. DISCHARGE §20-606(a)(1)

In order to establish a violation for discharge, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was performing and meeting legitimate job expectations;
- (3) Complainant was discharged;
- (4) Others similarly situated but not of the Complainant's protected class were not discharged;
- (5) Respondent offered a legitimate nondiscriminatory reason for the discharge; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

13. CONSTRUCTIVE DISCHARGE § 20-606(a)(1)

In order to establish a violation for constructive discharge, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was subjected to an unlawful practice under this Subtitle;
- (3) Complainant protested the unlawful actions, or Respondent was already aware of the unlawful actions;
- (4) Respondent did nothing to correct these conditions, despite being aware of the unlawful practices; and
- (5) The working conditions were so adverse that a reasonable person would not continue to subject themselves to the situation.

14. REINSTATEMENT §20-606(a)(1)

In order to establish a violation for reinstatement, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant is a former employee no longer on employment status and has a reasonable expectation or right to reinstatement.
- (3) Complaint has sought reinstatement;

- (4) Others similarly situated but not of Complainant's protected class were reinstated or Respondent continues to have vacant positions for which Complainant is qualified;
- (5) Respondent offered a legitimate nondiscriminatory reason for the decision; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

15. QUALIFICATIONS §20-606(a)(1)

In order to establish a violation for qualifications, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant expressed interest in or applied for a position for which Complainant was qualified;
- (3) After Complainant expressed interest in the position for which Complainant was qualified, the Respondent changed the stated qualifications for the position such that Complainant was no longer qualified;
- (4) Another person not of Complainant's protected class was selected for the position;
- (5) Respondent offered a legitimate nondiscriminatory reason for the change; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

16. TESTING (ADVERSE IMPACT) §20-606(a)(1)

In order to establish a violation for testing (adverse impact), the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant participated in an employment related testing process;
- (3) Complainant failed or scored poorly;
- (4) Statistical analysis of test scores shows an adverse impact on Complainant's protected class;
- (5) Respondent cannot establish that the test is valid under the "Uniform Guidelines for Employee Selection."

17. TESTING (DISPARATE TREATMENT) §20-606(a)(1)

In order to establish a violation for testing (disparate treatment), the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant participated in an employment related testing process;
- (3) Complainant failed or scored poorly because the test was administered in a biased or unequal manner;
- (4) Others not of the Complainant's protected class scored higher benefiting from the unequal or biased manner of the test;
- (5) Respondent offered a legitimate nondiscriminatory reason for the disparate treatment; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

18. TRAINING §20-606(d)

In order to establish a violation for training, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was eligible for an employment-related training opportunity and made an application for training;
- (3) Complainant was denied training;
- (4) Respondent offered a legitimate nondiscriminatory reason for the denial; and
- (5) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

19. APPRENTICESHIP §20-606(d)

In order to establish a violation for apprenticeship, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant made an application for apprenticeship;
- (3) Complainant was qualified but was not admitted;
- (4) Others similarly situated but not of the Complainant's protected class were admitted;
- (5) Respondent offered a legitimate nondiscriminatory reason for the decision; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

20. JOB CLASSIFICATION §20-606(e)(1)

In order to establish a violation for job classification, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant performs the same or substantially the same duties as others not of Complainant's protected class, but who are classified higher on the scales of salary or status;
- (3) Respondent cannot explain the difference in classification or the explanation is in fact pretext for discrimination.
- (4) Respondent offered a legitimate nondiscriminatory reason for the job classification; and
- (5) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

21. LAYOFF §20-606(a)(1)

In order to establish a violation for a layoff, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was laid off from work;
- (3) Others similarly situated but not of Complainant's protected class were not laid off;
- (4) Respondent offered a legitimate nondiscriminatory reason for the layoff; and
- (5) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation

22. RECALL §20-606(a)(1)

In order to establish a violation for recall, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was denied recall at the time Complainant was entitled to be recalled from layoff;
- (3) Others similarly situated but not of Complainant's protected class were recalled;
- (4) Respondent offered a legitimate nondiscriminatory reason for denying the Complainant recall; and
- (5) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

23. SENIORITY §20-606(a)(1)

In order to establish a violation for seniority, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant is entitled to a right by virtue of Complainant's length of employment with Respondent;
- (3) Respondent refused to honor or denied the exercise of Complainant's rights;
- (4) Others similarly situated but not of Complainant's protected class were permitted to exercise their rights;
- (5) Respondent offered a legitimate nondiscriminatory reason for the decision; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

24. TENURE §20-606(a)(1)

In order to establish a violation for tenure, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was eligible for tenure consideration and made an application for tenure;
- (3) Complainant was denied tenure;
- (4) Others similarly situated but not of Complainant's protected class were granted tenure;
- (5) Respondent offered a legitimate nondiscriminatory reason for the decision; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

25. RETIREMENT §20-606(a)(1)

In order to establish a violation for retirement, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant has been forced to accept retirement;
- (3) Others similarly situated but not of Complainant's protected class were not required to retire;
- (4) Respondent offered a legitimate nondiscriminatory reason for the decision; and
- (5) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

26. HARASSMENT: HOSTILE ENVIRONMENT §20-606(a)(5)

In order to establish a violation for harassment: hostile environment, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was subjected to unwelcome and offensive conduct, which need not be severe or pervasive;
- (3) The unwelcome and offensive conduct was based on the Complainant's protected class;
- (4) Based on the totality of the circumstances, the unwelcome and offensive conduct unreasonably creates a working environment that a reasonable person would perceive to be abusive or hostile and the conduct has the purpose or effect of unreasonably interfering with work performance;
- (5) The Respondent knew or should have known about the harassment; and
- (6) The Respondent did not take prompt corrective action following the unwelcome and offensive conduct.

[Supervisor strict liability element replaces 5 and 6] Whether Supervisor's harassing actions were foreseeable or fell within his scope of employment (when or where the acts took place; workplace, offsite trainings, mandatory retreats, office parties).

Harassment Definition: 20-601(h)(3); Supervisor defined in §20-611 alongside co-worker and patron liability via negligence.

27. HARASSMENT: QUID PRO QUO §20-606(a)(5)

In order to establish a violation for harassment: quid pro quo, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was subjected to unwelcome and offensive conduct, which need not be severe or pervasive;
- (3) The unwelcome and offensive conduct was based on the Complainant's protected class; and
- (4) Submitting to unwelcome and offensive conduct was an expressed or implied condition of keeping the job, and refusal would result in a tangible adverse action.

[Supervisor strict liability element] Whether Supervisor's harassing actions were foreseeable or fell within his scope of employment (when or where the acts took place; workplace, offsite trainings, mandatory retreats, office parties).

Harassment Definition: 20-601(h)(1)(ii)(1)-(2); Supervisor defined in §20-611 alongside co-worker and patron liability via negligence.

28. SEXUAL HARASSMENT: HOSTILE ENVIRONMENT §20-606(a)(5)

In order to establish a violation for sexual harassment: hostile environment, the evidence must show the following:

- (1) Complainant was subjected to conduct which need not be severe or pervasive, that consists of unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature, and based on the totality of the circumstances, the conduct unreasonably creates a working environment that a reasonable person would perceive to be abusive or hostile.
- (2) Complainant rejected the unwanted conduct;
- (3) The unwelcome sexual harassment was based on the Complainant's sex;
- (4) The Respondent knew or should have known about the harassment; and
- (5) The Respondent did not take prompt corrective action following the unwelcome sexual harassment.

[Supervisor strict liability element replaces 4 and 5] Whether Supervisor's harassing actions were foreseeable or fell within his scope of employment (when or where the acts took place; workplace, offsite trainings, mandatory retreats, office parties).

Sexual Harassment Definition: 20-601(2)(k)(3); Supervisor defined in §20-611 alongside co-worker and patron liability via negligence.

29. SEXUAL HARASSMENT: QUID PRO QUO §20-606(a)(5)

In order to establish a violation for sexual harassment: quid pro quo, the evidence must show the following:

- (1) Complainant was subjected to conduct which need not be severe or pervasive, that consists of unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature;
- (2) Complainant rejected the unwanted conduct;
- (3) The unwelcome sexual harassment was based on the Complainant's sex; and
- (4) Submitting to unwelcome sexual conduct was an expressed or implied condition of keeping the job, and refusal would result in a tangible adverse action.

[Supervisor strict liability element] Whether Supervisor's harassing actions were foreseeable or fell within his scope of employment (when or where the acts took place; workplace, offsite trainings, mandatory retreats, office parties).

Sexual Harassment Definition: 20-601(2)(k)(1)-(2); Supervisor defined in §20-611 alongside co-worker and patron liability via negligence.

30. RETALIATION §20-606(f)

Retaliation Guidelines:

Annotated Code of Maryland, State Government Article § 20-606(f) states:

(f) An employer may not discriminate or retaliate against any of its employees or applicants for employment, an employment agency may not discriminate against any individual, and a labor organization may not discriminate or retaliate against any member or applicant for membership because the individual has:

- (1) opposed any practice prohibited by this subtitle; or
- (2) made a charge, testified, assisted, or participated in any manner in any proceeding, or hearing under this subtitle.

In order to establish a violation for retaliation, the evidence must show the following:

- (1) Complainant was engaged in a protected activity;
- (2) Respondent was aware of that protected activity;
- (3) Respondent took adverse employment action;
- (4) The adverse employment action was casually connected to the protected activity;
- (5) Respondent offered a legitimate nondiscriminatory reason for the adverse action; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

31. UNFAVORABLE REFERENCE §20-606(b)(2)

In order to establish a violation for unfavorable reference, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was given an unfavorable/negative reference;
- (3) Complainant was performing and meeting legitimate job expectations;
- (4) Respondent offered a legitimate nondiscriminatory reason for the unfavorable reference; and
- (5) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

32. ADVERTISING § 20-606(e)(1)

In order to establish a violation for advertising, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) The Respondent advertised a position specifying as a requirement of the position membership in a class other than the Complainant's or stating a preference that would "chill" Complaint from making application;
- (3) The Complainant was otherwise qualified for the position; and
- (4) The Respondent is unable to establish a bona fide occupational qualification for the group advertised.

**33. REASONABLE ACCOMMODATION DISCRIMINATION IN PREGNANCY
OR CHILDBIRTH §20-609**

Disabilities due to Pregnancy or Childbirth Guidelines:

Annotated Code of Maryland, State Government Article § 20-609 states:

- (a) In this section, “reasonable accommodation” means an accommodation:
 - (1) for an employee’s disability caused or contributed to by pregnancy; and
 - (2) that does not impose an undue hardship on the employee’s employer.

- (b) Disabilities caused or contributed to by pregnancy or childbirth:
 - (1) are temporary disabilities for all job-related purposes; and
 - (2) shall be treated as temporary disabilities under any health or temporary disability insurance or sick leave plan available in connection with employment.

- (c) Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions of leave, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

- (d) If an employee requests a reasonable accommodation, the employer shall explore with the employee all possible means of providing the reasonable accommodation, including:
 - (1) changing the employee’s job duties;
 - (2) changing the employee’s work hours
 - (3) relocating the employee’s work area;
 - (4) providing mechanical or electrical aids;
 - (5) transferring the employee to a less strenuous or less hazardous position; or
 - (6) providing leave.

In order to establish a violation for reasonable accommodation discrimination when caused or contributed to by pregnancy or childbirth, the evidence must show the following:

- (1) Pregnancy or childbirth caused or contributed to the Complainant’s temporary disability.
- (2) Complainant told Respondent she was pregnant or Respondent had reason to know;
- (3) Complainant made a request for a reasonable accommodation.
- (4) Complainant was able to perform the essential functions of the position with a reasonable accommodation;
- (5) Respondent refused/failed to make an accommodation; and
- (6) Respondent has no verified defense of undue hardship.

34. GENETIC TESTING §20-606(a)(3) (per se violation)

In order to establish a violation for genetic testing, the evidence must show the following:

- (1) Respondent requested or required genetic tests or genetic information as a condition of hiring or determining benefits.

35. GENETIC TESTING: COMPLAINANT REFUSAL §20-606(a)(1)(ii) and §20-606(a)(2)(ii)

In order to establish a violation for genetic testing: complainant refusal, the evidence must show the following:

- (1) Complainant refused to submit to a genetic test or make available the results of a genetic test;
- (2) Respondent took an adverse action by failing or refusing to hire, or otherwise discriminating against the Complainant in compensation, terms, conditions, or privileges of employment; and
- (3) Respondent's adverse action was based on the Complainant's refusal to submit to or provide the results of genetic testing.

HOUSING DISCRIMINATION

1. REFUSAL TO SELL/RENT §20-705(1)

In order to establish a violation for refusal to sell/rent, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant inquired/applied for and was qualified to rent/purchase a property;
- (3) Complainant's inquiry/application was rejected;
- (4) Respondent's property remained available thereafter;
- (5) Respondent offered a legitimate nondiscriminatory reason for the adverse action; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

2. REASONABLE ACCOMMODATION §20-706(b)(4)

In order to establish a violation for refusal to grant a reasonable accommodation, the evidence must show the following:

- (1) Complainant has a disability as defined under the Annotated Code of Maryland, State Government Article, § 20-701(b);
- (2) Respondent knew or should have known about the disability;
- (3) Complainant requested an accommodation to the rules, policies, practices, or services that is both reasonable and necessary to allow the Complainant an equal opportunity to use and enjoy their dwelling;
- (4) Respondent refused to provide the reasonable accommodation; and
- (5) Respondent has no verified defense of undue hardship.

3. REASONABLE MODIFICATION §20-706(b)(3)

In order to establish a violation for refusal to grant a reasonable modification, the evidence must show the following:

- (1) Complainant has a disability as defined under the Annotated Code of Maryland, State Government Article, § 20-701(b);
- (2) Respondent knew or should have known about the disability;
- (3) Complainant requested permission to reasonably modify the dwelling, to be paid for at their own expense, that is both reasonable and necessary to allow the Complainant an equal opportunity to use and enjoy their dwelling, and agreed to return the premises to its original condition upon leaving;
- (4) Respondent refused to permit the reasonable modification; and
- (5) Respondent has no verified defense of undue hardship.

4. TERMS §20-705(2)

In order to establish a violation for terms, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant is a tenant of the Respondent;
- (3) Respondent imposed unfavorable or less favorable terms on the Complainant;
- (4) The Respondent did not impose such terms on similarly situated tenants not of the

Complainant's protected class;

(5) Respondent offered a legitimate nondiscriminatory reason for the **adverse action**; and

(6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

5. CONDITIONS §20-705(2)

In order to establish a violation for conditions, the evidence must show the following:

(1) Complainant is a member of a protected class;

(2) Complainant is a tenant of the Respondent;

(3) Respondent imposed unfavorable or less favorable conditions on the Complainant;

(4) The Respondent did not impose such conditions on similarly situated tenants not of the Complainant's protected class;

(5) Respondent offered a legitimate nondiscriminatory reason for the **adverse action**; and

(6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

6. PRIVILEGES §20-705(2)

In order to establish a violation for privileges, the evidence must show the following:

(1) Complainant is a member of a protected class;

(2) Complainant is a tenant of the Respondent;

(3) Respondent imposed unfavorable or less favorable privileges on the Complainant;

(4) The Respondent maintained privileges for similarly situated tenants not of the Complainant's protected class;

(5) Respondent offered a legitimate nondiscriminatory reason for the **adverse action**; and

(6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

7. EVICTION §20-705(1)

In order to establish a violation for eviction, the evidence must show the following:

(1) Complainant is a member of a protected class;

(2) Complainant is a tenant of the Respondent;

(3) Respondent acted to terminate the Complainant's tenancy with the intent to evict, for example sending an eviction notice;

(4) Respondent did not take similar action against a tenant not of the Complainant's protected class or the dwelling remained available thereafter;

(5) Respondent offered a legitimate nondiscriminatory reason for the eviction; and

(6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

8. TERMINATION §20-705(1)

In order to establish a violation for termination, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant is a tenant of the Respondent;
- (3) Respondent acted to terminate the Complainant's tenancy, for example sending a notice of termination;
- (4) Respondent did not take similar action against a tenant not of the Complainant's protected class or the dwelling remained available thereafter;
- (5) Respondent offered a legitimate nondiscriminatory reason for the termination; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

9. REFUSAL TO RENEW §20-705(1)

In order to establish a violation for refusal to renew, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant is a tenant of the Respondent;
- (3) Respondent acted to refuse to renew the Complainant's tenancy, for example notifying the Complainant that they will not be offered the opportunity to renew their lease;
- (4) Respondent did not take similar action against a tenant not of the Complainant's protected class or the dwelling remained available thereafter;
- (5) Respondent offered a legitimate nondiscriminatory reason for the refusal to renew; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

10. COERCION, INTIMIDATION, THREATS, INTERFERENCE: PROTECTED CLASS §20-708(1)

In order to establish a violation for coercion, intimidation, threats, interference based on protected class, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Respondent coerced, intimidated, threatened, or otherwise interfered with the Complainant's right to enjoy their housing; and
- (3) The unwelcome behavior was based on the Complainant's protected class;

11. COERCION, INTIMIDATION, THREATS, INTERFERENCE: PROTECTED ACTIVITY §20-708(2)

In order to establish a violation for coercion, intimidation, threats, interference based on protected activity, the evidence must show the following:

- (1) Complainant engaged or attempted to engage in a protected activity or aided/encouraged another to do so;
- (2) Respondent coerced, intimidated, threatened, or otherwise interfered with the Complainant's right to enjoy their housing; and

(3) Circumstantial evidence indicates the Respondent's actions were related to the protected activity.

12. RETALIATION §20-708(3)

In order to establish a violation for retaliation, the evidence must show the following:

- (1) Complainant was engaged in a protected activity;
- (2) Respondent was aware of that protected activity;
- (3) Respondent took adverse action against Complainant;
- (4) The adverse action was causally connected to the protected activity;
- (5) Respondent offered a legitimate nondiscriminatory reason for the adverse action; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

13. HARASSMENT: HOSTILE ENVIRONMENT

In order to establish a violation for harassment: hostile environment, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was subjected to unwelcome behavior;
- (3) The unwelcome behavior was based on the Complainant's protected class;
- (4) The harassment was sufficiently severe or pervasive to deprive the Complainant of the right to enjoy their home; and
- (5) The Respondent knew or should have known about the harassment and failed to take prompt corrective action.

14. HARASSMENT: QUID PRO QUO

In order to establish a violation for harassment: quid pro quo, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant was subjected to unwelcome behavior;
- (3) The unwelcome behavior was based on the Complainant's protected class; and
- (4) Submitting to unwelcome behavior was an expressed or implied condition of housing, and refusal would result in a tangible adverse action.

15. SEXUAL HARASSMENT: HOSTILE ENVIRONMENT §20-705(2)

In order to establish a violation for sexual harassment: hostile environment, the evidence must show the following:

- (1) Complainant was subjected to unwelcome conduct, which was sufficiently severe or pervasive, that consisted of unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature;
- (2) The unwelcome sexual behavior was based on the Complainant's sex;
- (3) Complainant rejected the unwanted behavior;
- (4) That altered the Complainant's use and enjoyment of their dwelling and created an abusive and hostile environment;
- (5) The Respondent knew or should have known of the unwelcome sexual harassment and failed to take prompt corrective action.

16. SEXUAL HARASSMENT: QUID PRO QUO §20-705(2)

In order to establish a violation for sexual harassment: quid pro quo, the evidence must show the following:

- (1) Respondent requested or demanded sexual favors from the Complainant;
- (2) Such request or demand was unwelcome;
- (3) Submitting to unwelcome sexual conduct was an expressed or implied condition of housing, and refusal would result in a tangible adverse action; and
- (4) Complainant acquiesced or refused the Respondent's request or demand, and the Respondent then deprived the Complainant housing, or altered any terms, conditions, or related privileges because of the refusal.

17. FALSELY REPRESENTING AVAILABILITY §20-705(4)

In order to establish a violation for falsely representing availability, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant requested information on the availability of particular housing;
- (3) Respondent failed or refused to provide truthful information as to the availability of such housing; and
- (4) Respondent provided such information to inquirers not of the Complainant's protected class or the housing remained available thereafter.

**18. DISCRIMINATORY NOTICES, STATEMENTS, ADVERTISEMENTS
§20-705(3)**

In order to establish a violation for discriminatory notices, statements, advertisements, the evidence must show the following:

- (1) Complainant is a member of a protected class;

- (2) Respondent made, printed, or published a notice, statements, or advertisement with respect to the sale or rental of a dwelling; and
- (3) The notice, statement, or advertisement indicated a preference, limitation, or discrimination based on a protected class and denied the complainant a housing opportunity.

19. FUTILE GESTURE DOCTRINE §20-705(3)

In order to establish a violation for futile gesture doctrine, the evidence must show the following:

- (1) Complainant is a member of a protected class who was a potential bona fide renter/buyer of the property and financially able to purchase or rent;
- (2) The Respondent discriminated against persons of the Complainant's protected class;
- (3) The Complainant saw, read and/or was reliably informed of the advertisement/policy of discrimination and would have taken steps to rent/buy the property "but for" the discrimination; and
- (4) The Respondent would have denied the Complainant had the Complainant disclosed an interest in the property.

20. DESIGN AND CONSTRUCTION §20-706(c)

In order to establish a violation for design and construction, the evidence must show the following:

- (1) On or after July 1, 1991, a covered multifamily dwelling for first occupancy was designed and constructed by Respondent in violation of State law requirements in §20-706(c) or Respondent is not in compliance with:
 - (i) the appropriate requirements of the most current revision of the American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People (commonly cited as ANSI A117.1); or
 - (ii) the federal law, rules, and guidelines on handicapped accessibility adopted under the federal Fair Housing Amendments Act of 1988 and incorporated by reference in the regulations adopted by the Department of Housing and Community Development under § 12-202 of the Public Safety Article.

21. MUNICIPAL SERVICES §20-705(2)

In order to establish a violation for municipal services, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant applied to the Respondent for municipal services and was qualified to receive them;
- (3) Respondent denied the Complainant's application; and
- (4) Respondent approved an application for such services for a similarly situated party not of the Complainant's protected class during a relatively near time period.

22. STEERING: SEGREGATED NEIGHBORHOOD §20-705(1)

In order to establish a violation for steering: segregated neighborhood, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant sought to buy or rent housing from Respondent;
- (3) Respondent offered Complainant housing in a protected-class concentrated building or area;
- (4) Respondent had another dwelling available in a building or area not concentrated by the Complainant's protected class; and
- (5) Respondent did not offer Complainant the dwelling in the building or area not concentrated by persons of the Complainant's protected class.

23. LOAN/INSURANCE/APPRaisal DENIALS §20-705(2)

In order to establish a violation for loan/insurance/appraisal denials the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant applied for and was qualified for a loan/insurance/appraisal from the Respondent;
- (3) Respondent rejected the loan/insurance/appraisal application; and
- (4) Respondent issued loan/insurance/appraisal to applicants with similar qualifications not of the Complainant's protected class.

24. UNFAVORABLE TERMS §20-705(2)

In order to establish a violation for unfavorable terms, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant applied for and was qualified for a loan/insurance/appraisal from the Respondent;
- (3) Respondent offered the Complainant a loan/insurance/appraisal on grossly less favorable terms; and
- (4) Respondent deliberately targeted the Complainant and/or others for such terms due to their protected class or Respondent issued a loan/insurance/appraisal on more favorable terms to others not of the Complainant's protected class.

25. REDLINING §20-707(b)(1)

In order to establish a violation for redlining, the evidence must show the following:

- (1) Complainant sought to secure/insure/appraise a dwelling in a protected class concentrated area;
- (2) Complainant applied for and was qualified for a loan/insurance/appraisal from the Respondent;

- (3) Respondent rejected the loan/insurance/appraisal application because the dwelling was in a protected class concentrated area; and
- (4) Respondent has issued loans/insurance/appraisals to applicants with similar qualifications for dwellings not in a protected class concentrated area.

26. REVERSE REDLINING §20-707(b)(1)

In order to establish a violation for reverse redlining, the evidence must show the following:

- (1) Complainant sought to secure/insure a dwelling in a protected class concentrated area;
- (2) Complainant applied for and was qualified for a loan/insurance from the Respondent;
- (3) The Respondent offered the Complainant a loan/insurance on grossly less favorable terms; and
- (4) The Respondent deliberately targeted the Complainant and/or others for such terms due to their dwellings location in a protected class concentrated area or the Respondent issued a loan/insurance on more favorable terms for dwellings not in a protected class concentrated area.

27. BLOCKBUSTING §20-705(5)

In order to establish a violation for blockbusting, the evidence must show the following:

- (1) Respondent sought to induce or attempt to induce a person to sell or rent a dwelling and conveys that a neighborhood is undergoing or is about to undergo change in the protected class of persons residing in it; and
- (2) Respondent was engaging in this activity for profit, whether or not any profit was realized.

OR

- (1) Respondent encouraged a person to sell or rent a dwelling through assertions that the entry or prospective entry of individuals of a particular protected class can or will result in undesirable consequences for the project, neighborhood, or community (such as lowering of property values, an increase in criminal or antisocial behavior, or decline in the quality of schools or other services or facilities); and
- (2) Respondent was engaging in this activity for profit, whether or not any profit was realized.

**PUBLIC
ACCOMMODATIONS
DISCRIMINATION**

1. DENIAL OF SERVICE § 20-304

In order to establish a violation for denial of service, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Respondent is a “place of public accommodation” as defined by § 20-301;
- (3) Respondent denied the Complainant a service(s) based on the Complainant’s protected class in a discriminatory manner, whether directly or indirectly; and
- (4) Respondent did not deny service(s) to another person not of the Complainant’s protected class.

2. DENIAL OF REASONABLE ACCOMMODATION §20-305(a)

In order to establish a violation for denial of reasonable accommodation, the evidence must show the following:

- (1) Complainant has a disability as defined under the Annotated Code of Maryland, State Government Article, § 20-601(b);
- (2) Respondent is a “place of public accommodation” as defined by § 20-301;
- (3) Respondent was aware or reasonably should have been aware that the Complainant is an individual with a disability;
- (4) Complainant requested a reasonable accommodation to make a place of public accommodation suitable for access, use, and patronage by an individual with a disability without:
 - (a) danger to the individual’s health or safety; and
 - (b) undue hardship or expense to the person making the accommodation;
- (5) Respondent denied the Complainant’s reasonable accommodation request or failed to respond or delayed responding to the request such that it amounted to denial; and
- (6) The Respondent’s reasonable accommodation denial made services unavailable to the Complainant.

ADDITIONAL CLAIMS

COMMERCIAL NONDISCRIMINATION – State Finance & Procurement Art. §19-101

In order to establish a violation for commercial discrimination, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Complainant is a vendor, supplier, subcontractor, or commercial customer that has entered into a State contract or subcontract;
- (3) Respondent is a State or business entity that has entered into a State contract;
- (4) Respondent has displayed prejudice in the solicitation, selection, hiring, or commercial treatment of Complainant's because of Complainant's protected class;
- (5) Others similarly situated but not of the Complainant's protected class were provided more favorable solicitation, selection, hiring, or commercial treatment; and
- (6) Respondent offered a legitimate nondiscriminatory reason for the differential treatment; and
- (7) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

HEALTH SERVICES DISCRIMINATION – Health General Art. §19-355

In order to establish a violation for health services discrimination, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Respondent is a hospital or related institution;
- (3) Respondent subjected Complainant to inadequate medical care because of the Complainant's protected class;
- (4) Others similarly situated but not of the Complainant's protected class were provided with more competent medical care;
- (5) Respondent offered a legitimate nondiscriminatory reason for the differential treatment; and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

COMMERCIAL LEASING DISCRIMINATION – State Government Art. §20-501

In order to establish a violation for commercial lease discrimination, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Respondent is an agent or employee of the owner or operator of commercial property or a person that is licensed or regulated by the State;
- (3) Respondent subjected Complainant to unfavorable terms, conditions, privileges, of the leasing of commercial property because of the Complainant's protected class;
- (4) Others similarly situated but not of the Complainant's protected class, were provided more favorable terms, conditions, privileges, of the leasing of commercial property; and

- (5) Respondent offered a legitimate nondiscriminatory reason for the differential treatment;
and
- (6) Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.

INSURANCE DISCRIMINATION – Insurance Art. §2–202(a)(2)

In order to establish a violation for insurance carrier discrimination, the evidence must show the following:

- (1) Complainant is a member of a protected class;
- (2) Respondent is an insurer;
- (3) Respondent refused, withheld, canceled, or denied the Complaint coverage because of the Complainant’s protected class;
- (4) Others similarly situated but not of the Complainant’s protected class were provided with insurance;
- (5) Respondent offered a legitimate nondiscriminatory reason for the differential treatment;
and
- (6) Then the Complainant shows the offered nondiscriminatory reason is a pretext to excuse the violation.